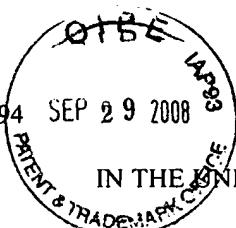


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SEP 29 2008



PATENT APPLICATION AF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Wolfgang Hirschburger

Serial No.: 10/685,280

Conf. No.: 4919

Filed: 10/14/2003

For: PORTABLE BATTERY CHARGING AND
AUDIO UNIT

Art Unit: 2615

Examiner: Paul, Disler

) I hereby certify that this paper is being deposited
) with the United States Postal Service as FIRST-
) CLASS mail in an envelope addressed to:
) Commissioner for Patents, P.O. Box 1450,
) Alexandria, VA 22313-1450 on this date.
)
) *9/24/08* *Ryan J. Gray*
) Date Registration No. *2,6174*
) F-CLASS.WCM Attorney for Applicant(s)
) Appr. February 20, 1998

TRANSMITTAL OF APPEAL BRIEF

MS Appeal Brief-Patents
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on July 4, 2008.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$510.00

(complete (a) or (b) as applicable)

() (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

Extension fee for response within first month:

() By a small entity (1.9(f))	\$ 60.00
() By other than a small entity	\$ 120.00

Extension fee for response within second month:

() By a small entity (1.9(f))	\$ 230.00
() By other than a small entity	\$ 460.00

Extension fee for response within third month:

() By a small entity (1.9(f))	\$ 525.00
() By other than a small entity	\$ 1050.00

Extension fee for response within fourth month:

() By a small entity (1.9(f))	\$ 820.00
() By other than a small entity	\$ 1640.00

() The extension fee has already been filed in this application.

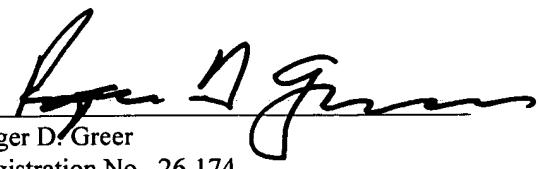
() A check in the amount of \$ _____ for the extension of time fee is enclosed.

(X) (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

(X) A check in the amount of \$ 510.00 is enclosed for filing the Appeal Brief.

(X) The Commissioner is hereby authorized to charge any additional fee which may be required, or credit any overpayment to Deposit Account No. 07-2069. Should no proper payment be enclosed, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 07-2069. (One additional copy of this Notice is enclosed herewith.)

Dated: September 24, 2008


Roger D. Greer
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SEP 29 2008

PATENT APPLICATION



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Wolfgang Hirschburger

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) *9/24/08* *Roger A. Green*
) Date Registration No. *2,6874*
) F-CLASS.WCM Attorney for Applicant(s)
) Appr. February 20, 1998

Serial No.: 10/685,280

Conf. No.: 4919

Filed: 10/14/2003

For: PORTABLE BATTERY CHARGING AND
AUDIO UNIT

Art Unit: 2615

Examiner: Paul, Disler

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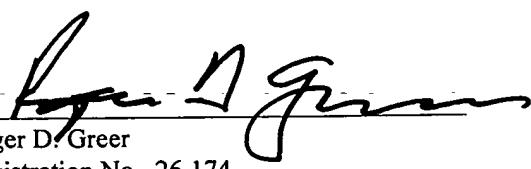
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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Wolfgang Hirschburger, et al.

Serial No.: 10/685,280

Conf. No.: 4919

Filed: 10/14/2003

For: PORTABLE BATTERY CHARGING
AND AUDIO UNIT

Art Unit: 2644

Examiner: Paul, Disler

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envelope addressed to: Commissioner for Patents, P.O.
Box 1450, Alexandria, VA 22313-1450, on this date.

9/24/08 *Paul Disler*

Date Registration No. 26174

F-CLASS.WCM

Appr. February 20, 1998 Attorney for Applicant(s)

APPELLANT'S BRIEF ON APPEAL PURSUANT TO 37 CFR § 41.37

This Appeal Brief is in support of Applicants' Notice of Appeal dated July 24, 2008.

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REAL PARTY IN INTEREST

S-B Power Tool Corporation.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

Claims that are pending, finally rejected and appealed are 1-21.

STATUS OF AMENDMENTS AFTER FINAL

No amendments were filed after the final office action dated March 24, 2008.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention generally concerns portable battery charging and audio units.

Independent claims 1 and 17 are annotated to the specification (Pg/line) and drawings as set forth below:

1. An apparatus comprising:

a housing (10) having a number of walls (12, 14, 20, 22), a top (16) and a bottom (Pg 4/4-18; Figs. 1-8);

a charger (84) located in said housing for charging a removable battery pack of the type which is used to power rechargeable hand tools and other tools (Pg. 5/19-20; Pg 8/14-9/15; Figs. 3, 9);

a receptacle (94) operably connected to said charger and being capable of receiving a removable battery pack to be charged by said charger (Pg 5/19-6/7; Figs. 3, 9)

an audio unit (30) for producing an audio signal located in said housing (Pg 4/19-5/8; Figs. 1, 2, 9);

a cord (70) and plug (72) for connecting said apparatus to a source of AC power (Pg. 5/9-10; Figs. 1, 6, 9);

a first circuit (140, 142) for connecting said cord to said charger and said audio unit, whereby AC power is applied to said audio unit to power the same and AC power is also applied to said charger (Pg. 8/14-9/15; Fig. 9);

a relay (150) connected in circuit between a battery pack located in said receptacle and said audio unit (Pg. 8/14-9/15; Fig. 9);

a relay coil (152) connected in circuit between said cord and said audio unit, said coil monitoring the presence of AC power being applied to said audio unit and causing said relay to open circuit and electrically isolating (Pg. 2/17-3/2) said audio unit from said battery when AC power is applied to said audio unit and close circuit when AC power is not applied to said audio unit, thereby enabling said battery pack to power said audio unit when AC power is not applied thereto (Pg. 8/14-9/15; Fig. 9).

17. An audio power unit for providing an audio output and for charging removable battery packs, said unit comprising:

a housing (10) having a generally cuboid shape with front, rear, left and right side walls (12, 14, 20, 22), a top (16) and a bottom (Pg 4/4-18; Figs. 1-8);

a charger (84) including a receptacle (94) located in said housing for charging the removable battery pack (Pg 5/19-6/7; Pg 8/14-9/15; Figs. 3, 9);

an audio unit (30) for producing an audio output located in said housing (Pg 4/19-5/8; Figs. 1, 2, 9);

a cord (70) and plug (72) for connecting said apparatus to a source of AC power (Pg 5/9-10; Figs. 1, 6, 9);

a circuit (140, 142) for connecting said cord to said charger and said audio unit, whereby AC power is applied to said audio unit to power the same and AC power is also applied to said charger, said circuit electrically isolating (Pg. 2/17-

3/2) said audio unit from said battery pack when AC power is applied to said audio unit and connecting said battery pack to power said audio unit when AC power is not applied to said audio unit (Pg. 8/14-9/15; Fig. 9).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether the § 103(a) rejection of claims 1-2, 5-6, 12-14 and 16 based upon Smith in view of Bhagwat et al. should be reversed.

Whether the § 103(a) rejection of claims 7-11, 17-21 based upon Smith in view of Bhagwat et al. and Kelly should be reversed.

ARGUMENT

The § 103(a) rejection of claims 1-2, 5-6, 12-14 and 16 based upon Smith in view of Bhagwat et al. should be reversed.

Claim 1 of the present application recites:

1. An apparatus comprising:
 - a housing having a number of walls, a top and a bottom;
 - a charger located in said housing for charging a removable battery pack of the type which is used to power rechargeable hand tools and other tools;
 - a receptacle operably connected to said charger and being capable of receiving a removable battery pack to be charged by said charger;
 - an audio unit for producing an audio signal located in said housing;
 - a cord and plug for connecting said apparatus to a source of AC power
 - a first circuit for connecting said cord to said charger and said audio unit, whereby AC power is applied to said audio unit to power the same and AC power is also applied to said charger;
 - a relay connected in circuit between a battery pack located in said receptacle and said audio unit;
 - a relay coil connected in circuit between said cord and said audio unit, said coil monitoring the presence of AC power being applied to said audio unit and causing said relay to open circuit and electrically isolating said audio unit from said battery when AC power is applied to said audio unit and close circuit when AC power is not applied to said audio unit, thereby enabling said battery pack to power said audio unit when AC power is not applied thereto.*

(Emphasis added)

It is believed that claims 1-2, 5-6, 12-14 and 16 have been improperly rejected under 35 U.S.C. 103(a) as being unpatentable over the Smith application in view of Bhagwat. Neither of these references are believed to teach or suggest these claims for several reasons, and it is respectfully requested that the examiner's rejection be reversed and the claims allowed.

The Examiner has responded to applicants' arguments with the statement that they were unpersuasive and that Bhagwat does disclose the similar feature as claimed: "a relay coil between cord and unit system and electrically isolate the system from battery when AC power is applied to (Fig. 4: column 5, lines 30-60) relay to isolate battery from unit system when power is applied with the contact switch being at NO.

The examiner's comment has an open quote but no closed quote and the entire sentence does not track the language of either claim 1 or claim 17. Also, applicants respectfully contend that Bhagwat does not supply the deficiency of Smith and does not **electrically isolate** Bhagwat's motor (applicants' audio unit) from the battery. The examiner's emphasis that the contact switch in its NO position isolates the battery from the "unit system" is simply not accurate.

Clearly, the positive terminal of Bhagwat's battery B shown in Fig. 4 is always connected to the motor 22 whether the AC power is on or off. It is respectfully submitted that the language of column 5, lines 50-54: "in this latter circuit configuration, the aforementioned battery circuit is opened ..." does not provide such electrical isolation. Nowhere in Bhagwat is there any mention of electrical isolation and the circuit diagram confirms that it does not occur.

In fact, Bhagwat teaches away from electrical isolation as claimed because when AC power is present in the Bhagwat circuit, unlike the present claimed invention which electrically isolates the audio unit from the battery, Bhagwat

maintains the battery in circuit, because that electrical connection is used to recharge the battery.

Thus, it is submitted that the open circuit configuration with the contact in the NO position is not electrically isolating said audio unit from said battery. Applicants' Fig. 9 relay shows **both legs** from the battery being disconnected from the audio unit and not simply one of the legs, which is what occurs with regard to Bhagwat. Since Bhagwat fails to electrically isolate the audio unit from the battery, it does not teach or suggest independent claims 1 and 17, and therefore the combination of Smith and Bhagwat similarly do not teach or suggest these claims. Applicants respectfully request the Board reverse these rejections and allow all claims that are pending in the application.

Applicants also maintain that Smith and Bhagwat are an improper combination for the reason that there is no motivation to combine them supplied by either of the references to combine them with the other. Moreover, the manner in which the examiner has applied the purported teachings of Bhagwat in the combination is **contrary** to the basic structure and functionality of Smith. The only reason for combining these references is the result of improper hindsight reconstruction, using the independent claims of the present application as a roadmap to formulate the rejection. Smith operates in a much different manner than Bhagwat, even if it can be assumed that Bhagwat's motor is the equivalent of an audio unit as set forth in applicants' claims 1 and 17.

Smith's paragraph 0031 describes a much different operation and is set out below, (with text in bold being made for emphasis):

Power supply 40 also provides power to radio circuitry

44. A switching means 42 may be connected to switch knob

17 to properly select the components receiving power. For

example, the **user can select** if the power supply 40:

(a) provides power to both the radio circuitry 44 and to

charger 43 (for charging battery pack 60);

(b) provides power to the radio circuitry 44 from the

battery pack 60;

(c) provides no power to any component; etc.

Switching means 42 may comprise relays, transistors or

other switching devices as is well known in the art. Preferably

power supply 40 can accept power from battery packs having

different voltages.

Paragraph 0031 describes the operation of the Smith device which is not believed to be contradicted by any other part of the patent. It clearly discloses and describes a switching means 42 that may be connected to a switch knob 17 to properly select the components receiving power. The knob 17 controls the switching means 42 which is described in the next to last sentence of the paragraph that it may comprise relays, transistors or other switching devices as is well known in the art.

The switching means is necessarily a means plus function element and it is defined in that sentence to comprise relays, transistors or other switching devices. However, the switching means performs the **function** that is clearly delineated in three paragraphs (a), (b) and (c). More particularly, the user can **select** if the power supply is to (a) provide power to both the radio circuitry 44 and to charger 43 (for charging battery pack 60), or (b) provides power to the radio circuitry 44 from the battery pack 60, or (c) provides no power to any component; etc.

None of these three alternatives is automatically done. It is stated to be **selected** by the user. There is no description whatsoever that indicates that there is any automatic operation from one option to another based upon a relay coil. Unlike the above described operation, **Bhagwat does not permit an operator to select the components receiving power.** The only “selection” that is permitted is the use of the on/off switch 54. Therefore, the user cannot select providing power to both the radio circuit and charger as opposed to providing power to the radio circuitry from the battery or provide no power to any component. This is simply not possible with the Bhagwat circuit. The only selection that is possible for a user is to use the on/off switch to control any power being supplied to the motor 22. Thus, it is clear from this discussion that Bhagwat cannot be combined with Smith without substantially altering the nature of the operation of Smith or Bhagwat.

There is another reason that it is not obvious to combine Smith and Bhagwat. It should be noted that Bhagwat issued in May of 1989 and that the

patent is assigned to Black & Decker. The Smith application was filed in May of 2002 and is also assigned to Black & Decker. It is submitted that if it were obvious to combine these two patents, it would have been done by Smith since both Smith and Bhagwat presumably work for the same company and Smith presumably had knowledge of the prior development of Bhagwat and still did not attempt to provide any automatic operation in such heavy duty audio equipment.

All of the claims that depend from claim 1 necessarily incorporate the features of that claim and in addition define other features and/or functionality that is not found in that claim and therefore should be allowable.

The § 103(a) rejection of claims 7-11, 17-21 based upon Smith in view of Bhagwat et al. and Kelly should be reversed.

Claim 17 of the present application is also set forth below:

17. An audio power unit for providing an audio output and for charging removable battery packs, said unit comprising:

a housing having a generally cuboid shape with front, rear, left and right side walls, a top and a bottom;

a charger including a receptacle located in said housing for charging the removable battery pack;

an audio unit for producing an audio output located in said housing;

a cord and plug for connecting said apparatus to a source of AC power:

a circuit for connecting said cord to said charger and said audio unit, whereby AC power is applied to said audio unit to power the same and AC power is also applied to said charger, said circuit electrically isolating said audio unit from said battery pack when AC power is applied to said audio unit and connecting said battery pack to power said audio unit when AC power is not applied to said audio unit.

(Emphasis added.)

Claim 17 has distinguishing language similar to claim 1, namely: “**said circuit electrically isolating said audio unit from said battery pack when AC power is applied to said audio unit . . .**” All of the reasons set forth previously with regard to the rejection of claim 1 are believed to equally apply to this claim

All of the claims that depend from claim 17 necessarily incorporate the features of that claim and in addition define other features and/or functionality that is not found in that claim and therefore should be allowable.

CONCLUSION

For the above reasons, Applicants request the Board to reverse the outstanding rejections. The application should then be permitted to pass to allowance.

Respectfully submitted,

GREER, BURNS & CRAIN, LTD.

By



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CLAIMS APPENDIX

1. An apparatus comprising:
 - a housing having a number of walls, a top and a bottom;
 - a charger located in said housing for charging a removable battery pack of the type which is used to power rechargeable hand tools and other tools;
 - a receptacle operably connected to said charger and being capable of receiving a removable battery pack to be charged by said charger;
 - an audio unit for producing an audio signal located in said housing;
 - a cord and plug for connecting said apparatus to a source of AC power
 - a first circuit for connecting said cord to said charger and said audio unit, whereby AC power is applied to said audio unit to power the same and AC power is also applied to said charger;
 - a relay connected in circuit between a battery pack located in said receptacle and said audio unit;
 - a relay coil connected in circuit between said cord and said audio unit, said coil monitoring the presence of AC power being applied to said audio unit and causing said relay to open circuit and electrically isolating said audio unit from said battery when AC power is applied to said audio unit and close circuit when AC power is not applied to said audio unit, thereby enabling said battery pack to power said audio unit when AC power is not applied thereto.

2. An apparatus as defined in claim 1 further including at least one AC power receptacle connected in said first circuit so that AC power can be provided to said receptacle when said cord and plug is connected to a source of AC power.

3. An apparatus as defined in claim 1 further including an AC to DC converter connected in said first circuit and at least one DC power receptacle connected to said converter.

4. An apparatus as defined in claim 2 further including a ground fault circuit interrupter connected in said first circuit between said at least one AC power receptacle and said cord .

5. An apparatus as defined in claim 1 wherein said audio unit comprises a radio.

6. An apparatus as defined in claim 5 wherein said audio unit further comprises a CD player.

7. An apparatus as defined in claim 1 wherein said housing has a generally cuboid shape.

8. An apparatus as defined in claim 7 wherein said housing has a generally cube shape.

9. An apparatus as defined in claim 7 further comprising a frame structure that is in the shape of an open faced cuboid, with each leg being connected to two other legs at right angles, said frame structure being larger than said housing and being attached thereto at multiple connection points, said frame structure providing protection for said housing.

10. An apparatus as defined in claim 9 wherein said frame structure comprises a plurality of elongated generally cylindrical frame members that are connected to one another by connector fittings at the eight corners.

11. An apparatus as defined in claim 10 wherein said housing has a top, bottom, front wall, rear wall and two side walls, and recesses located at the interface of the top and the two side walls and the bottom and the two side walls, an elongated cylindrical housing member located in each recess and attached to said housing at opposite ends, a plurality of linking connectors being attached to each housing member and an adjacent frame member, to thereby connect said frame structure to said housing.

12. An apparatus as defined in claim 1 wherein said audio unit has operating controls and displays located in a front wall of said housing.

13. An apparatus as defined in claim 1 further comprising an access door located in a rear wall for accessing a chamber that includes a receptacle for receiving a battery pack for charging by said charger.

14. An apparatus as defined in claim 2 wherein said at least one AC power receptacle is located in a first side wall.

15. An apparatus as defined in claim 1 wherein said cord and plug extend from a second side wall, said apparatus further including a cord wrap structure on said second side wall.

16. An apparatus as defined in claim 1 wherein said top has a recess therein with a bridging portion extending across said recess and forming a handle for carrying said apparatus.

17. An audio power unit for providing an audio output and for charging removable battery packs, said unit comprising:

a housing having a generally cuboid shape with front, rear, left and right side walls, a top and a bottom;

a charger including a receptacle located in said housing for charging the removable battery pack;

an audio unit for producing an audio output located in said housing;

a cord and plug for connecting said apparatus to a source of AC power;

a circuit for connecting said cord to said charger and said audio unit, whereby AC power is applied to said audio unit to power the same and AC power is also applied to said charger, said circuit electrically isolating said audio unit from said battery pack when AC power is applied to said audio unit and connecting said battery pack to power said audio unit when AC power is not applied to said audio unit.

18. An audio power unit as defined in claim 17 wherein said circuit further comprises:

a relay connected in circuit between a battery pack located in said receptacle and said audio unit; and

a relay coil connected between said cord and said audio unit, said coil monitoring the presence of AC power being applied to said audio unit and causing said relay to open circuit and isolate said audio unit from said battery pack when AC power is applied to said audio unit and close circuit when AC power is not applied to said audio unit, thereby enabling said battery pack to power said audio unit when AC power is not applied thereto.

19. An audio power unit as defined in claim 17 further comprising a frame structure that is in the shape of an open faced cuboid, with each leg being connected to two other legs at right angles, said frame structure being larger than said housing and being attached thereto at multiple connection points, said frame structure providing protection for said housing.

20. An audio power unit as defined in claim 19 wherein said frame structure comprises a plurality of elongated generally cylindrical frame members that are connected to one another by connector fittings at the eight corners.

21. An apparatus as defined in claim 20 wherein said housing has recesses located at the interface of the top and said two side walls and the bottom and said two side walls, an elongated cylindrical housing member located in each recess and attached to said housing at opposite ends, a plurality of linking connectors being attached to each housing member and an adjacent frame member, to thereby connect said frame structure to said housing.

EVIDENCE - APPENDIX

None.

RELATED PROCEEDINGS- APPENDIX

None.